

1 A bill to be entitled
2 An act relating to sexual offenses; providing a short
3 title; amending s. 90.404, F.S.; revising offenses that are
4 considered "child molestation" for purposes of admitting
5 evidence of other crimes, wrongs, or acts in a criminal
6 case involving child molestation; providing for admission
7 of evidence of other crimes, wrongs, or acts in cases
8 involving a sexual offense; defining the term "sexual
9 offense"; requiring certain property or material that is
10 used in a criminal proceeding to remain in the care,
11 custody, and control of the law enforcement agency, the
12 state attorney, or the court; prohibiting the reproduction
13 of such property or material by the defendant when
14 specified criteria are met by the state attorney;
15 permitting access to the materials by the defendant;
16 amending s. 395.1021, F.S.; requiring a licensed facility
17 that provides emergency room services to arrange for the
18 gathering of forensic medical evidence required for
19 investigation and prosecution from a victim who has
20 reported a sexual battery to a law enforcement agency or
21 who requests that such evidence be gathered for a possible
22 future report; amending s. 775.15, F.S.; providing that a
23 prosecution for video voyeurism in violation of specified
24 provisions may, in addition to existing time periods, be
25 commenced within 1 year after the victim of video voyeurism
26 obtains actual knowledge of the existence of such a
27 recording or the recording is confiscated by a law
28 enforcement agency, whichever occurs first; providing that

29 dissemination of a recording before such knowledge or
30 confiscation does not affect such a time period; amending
31 s. 794.052, F.S.; requiring a law enforcement officer to
32 provide or arrange for transportation of a victim of sexual
33 battery to an appropriate facility for medical treatment or
34 forensic examination; providing for a review of a police
35 officer's final report by a victim and an opportunity for a
36 statement by a victim; amending ss. 794.056 and 938.085,
37 F.S.; requiring that an additional court cost or surcharge
38 be assessed against a defendant who pleads guilty or nolo
39 contendere to, or is found guilty of, regardless of
40 adjudication, certain criminal offenses; providing for
41 proceeds of the additional court cost or surcharge to be
42 deposited into the Rape Crisis Program Trust Fund;
43 reenacting s. 20.435(21)(a), F.S., relating to the Rape
44 Crisis Program Trust Fund, to incorporate the amendment
45 made to s. 794.056, F.S., in a reference thereto;
46 reenacting s. 794.055(3)(b), F.S., relating to access to
47 services for victims of sexual battery, to incorporate the
48 amendment made to s. 938.085, F.S., in a reference thereto;
49 amending s. 960.003, F.S.; providing for hepatitis testing
50 of persons charged with certain offenses; amending s.
51 960.198, F.S.; authorizing relocation assistance awards to
52 certain victims of sexual violence; amending s. 1003.42,
53 F.S.; requiring that public schools provide comprehensive
54 health education that addresses concepts of Internet
55 safety; providing an effective date.
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Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Walk in Their Shoes Act."

Section 2. Subsection (2) of section 90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

(b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "child molestation" means conduct proscribed by s. 787.025(2)(c), s. 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s. 796.035, s. 796.045, s. 800.04, s. 827.071, or s. 847.0135(5), s. 847.0145, or s. 985.701(1) when committed against a person 16 years of age or younger.

(c)1. In a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense is

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admissible and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "sexual offense" means conduct proscribed by s. 787.025(2)(c), s. 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s. 796.035, s. 796.045, s. 825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

(d)~~(e)~~1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), or paragraph (b), or paragraph (c), no fewer than 10 days before trial, the state shall furnish to the defendant or to the defendant's counsel a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.

2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

Section 3. Prohibition on reproduction of child pornography.—

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in s. 827.071, Florida Statutes, or constitutes child pornography as defined in s. 847.001, Florida Statutes, must remain secured or

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113 locked in the care, custody, and control of a law enforcement
114 agency, the state attorney, or the court.

115 (2) Notwithstanding any law or rule of court, a court
116 shall deny, in a criminal proceeding, any request by the
117 defendant to copy, photograph, duplicate, or otherwise reproduce
118 any property or material that portrays sexual performance by a
119 child or constitutes child pornography so long as the state
120 attorney makes the property or material reasonably available to
121 the defendant.

122 (3) For purposes of this section, property or material is
123 deemed to be reasonably available to the defendant if the state
124 attorney provides ample opportunity at a designated facility for
125 the inspection, viewing, and examination of the property or
126 material that portrays sexual performance by a child or
127 constitutes child pornography by the defendant, his or her
128 attorney, or any individual whom the defendant uses as an expert
129 during the discovery process or at a court proceeding.

130 Section 4. Subsection (2) of section 395.1021, Florida
131 Statutes, is amended to read:

132 395.1021 Treatment of sexual assault victims.—Any licensed
133 facility which provides emergency room services shall arrange
134 for the rendering of appropriate medical attention and treatment
135 of victims of sexual assault through:

136 (2) ~~The administration of medical examinations, tests, and~~
137 ~~analyses required by law enforcement personnel in the gathering~~
138 ~~of forensic medical evidence required for investigation and~~
139 ~~prosecution from a victim who has reported a sexual battery to a~~
140 ~~law enforcement agency or who requests that such evidence be~~

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gathered for a possible future report.

Such licensed facility shall also arrange for the protection of the victim's anonymity while complying with the laws of this state and may encourage the victim to notify law enforcement personnel and to cooperate with them in apprehending the suspect.

Section 5. Subsection (17) is added to section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations; exceptions.—

(17) In addition to the time periods prescribed in this section, a prosecution for video voyeurism in violation of s. 810.145 may be commenced within 1 year after the date on which the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first. Any dissemination of such a recording before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.

Section 6. Subsection (1) of section 794.052, Florida Statutes, is amended to read:

794.052 Sexual battery; notification of victim's rights and services.—

(1) A law enforcement officer who investigates an alleged sexual battery shall:

(a) Assist the victim in obtaining medical treatment, if

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169 medical treatment is necessary as a result of the alleged
170 incident, a forensic examination, and advocacy and crisis-
171 intervention services from a certified rape crisis center and
172 provide or arrange for transportation to the appropriate
173 facility.

174 (b) Advise the victim that he or she may contact a
175 certified rape crisis center from which the victim may receive
176 services.

177 (c) Prior to submitting a final report, permit the victim
178 to review the final report and provide a statement as to the
179 accuracy of the final report.

180 Section 7. Section 794.056, Florida Statutes, is amended
181 to read:

182 794.056 Rape Crisis Program Trust Fund.—

183 (1) The Rape Crisis Program Trust Fund is created within
184 the Department of Health for the purpose of providing funds for
185 rape crisis centers in this state. Trust fund moneys shall be
186 used exclusively for the purpose of providing services for
187 victims of sexual assault. Funds credited to the trust fund
188 consist of those funds collected as an additional court
189 assessment in each case in which a defendant pleads guilty or
190 nolo contendere to, or is found guilty of, regardless of
191 adjudication, an offense provided ~~defined~~ in s. 775.21(6) and
192 (10)(a), (b), and (g), s. 784.011, s. 784.021, s. 784.03, s.
193 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s.
194 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.01(3), s.
195 787.02(3), s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s.
196 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045,

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197 s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s.
198 800.04, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s.
199 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0133, s.
200 847.0135(2), s. 847.0137, s. 847.0145, s. 943.0435(4)(c), (7),
201 (8), (9)(a), (13), and (14)(c), or s. 985.701(1). Funds credited
202 to the trust fund also shall include revenues provided by law,
203 moneys appropriated by the Legislature, and grants from public
204 or private entities.

205 (2) The Department of Health shall establish by rule
206 criteria consistent with the provisions of s. 794.055(3)(a) for
207 distributing moneys from the trust fund to rape crisis centers.

208 Section 8. Section 938.085, Florida Statutes, is amended
209 to read:

210 938.085 Additional cost to fund rape crisis centers.—In
211 addition to any sanction imposed when a person pleads guilty or
212 nolo contendere to, or is found guilty of, regardless of
213 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
214 (g), s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045,
215 s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s.
216 784.083, s. 784.085, s. 787.01(3), s. 787.02(3), 787.025, s.
217 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s.
218 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06,
219 s. 796.07(2)(a)-(d) and (i), s. 800.03, s. 800.04, s. 810.14, s.
220 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s.
221 827.071, s. 836.10, s. 847.0133, s. 847.0135(2), s. 847.0137, s.
222 847.0145, s. 943.0435(4)(c), (7), (8), (9)(a), (13), and
223 (14)(c), or s. 985.701(1), the court shall impose a surcharge of
224 \$151. Payment of the surcharge shall be a condition of

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225 probation, community control, or any other court-ordered
226 supervision. The sum of \$150 of the surcharge shall be deposited
227 into the Rape Crisis Program Trust Fund established within the
228 Department of Health by chapter 2003-140, Laws of Florida. The
229 clerk of the court shall retain \$1 of each surcharge that the
230 clerk of the court collects as a service charge of the clerk's
231 office.

232 Section 9. For the purpose of incorporating the amendment
233 made by this act to section 794.056, Florida Statutes, in a
234 reference thereto, paragraph (a) of subsection (21) of section
235 20.435, Florida Statutes, is reenacted to read:

236 20.435 Department of Health; trust funds.—The following
237 trust funds shall be administered by the Department of Health:

238 (21) Rape Crisis Program Trust Fund.

239 (a) Funds to be credited to and uses of the trust fund
240 shall be administered in accordance with the provisions of s.
241 794.056.

242 Section 10. For the purpose of incorporating the amendment
243 made by this act to section 938.085, Florida Statutes, in a
244 reference thereto, paragraph (b) of subsection (3) of section
245 794.055, Florida Statutes, is reenacted to read:

246 794.055 Access to services for victims of sexual battery.—

247 (3)

248 (b) Funds received under s. 938.085 shall be used to
249 provide sexual battery recovery services to victims and their
250 families. Funds shall be distributed to rape crisis centers
251 based on an allocation formula that takes into account the
252 population and rural characteristics of each county. No more

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than 15 percent of the funds shall be used by the statewide nonprofit association for statewide initiatives. No more than 5 percent of the funds may be used by the department for administrative costs.

Section 11. Section 960.003, Florida Statutes, is amended to read:

960.003 Hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(1) LEGISLATIVE INTENT.—The Legislature finds that a victim of a criminal offense which involves the transmission of body fluids, or which involves certain sexual offenses in which the victim is a minor, disabled adult, or elderly person, is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed the offense has tested positive for hepatitis or human immunodeficiency virus (HIV) infection. The Legislature finds that to deny victims access to hepatitis and HIV test results causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of hepatitis and HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of hepatitis and HIV test results.

(2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

(a) In any case in which a person has been charged by

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information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after ~~of~~ the information or indictment is filed ~~court order~~. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian, requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment or information, the testing shall be done within 48 hours after the request.

(b) However, when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the offense was committed or when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, then upon the request of the victim or the victim's legal guardian, or of the parent or legal guardian, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after ~~of~~ the information or indictment is filed ~~court order~~. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian, requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment or information, the testing shall be done within 48 hours after the

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309 request. The testing shall be performed under the direction of
310 the Department of Health in accordance with s. 381.004. The
311 results of a hepatitis and ~~an~~ HIV test performed on a defendant
312 or juvenile offender pursuant to this subsection shall not be
313 admissible in any criminal or juvenile proceeding arising out of
314 the alleged offense.

315 (c) If medically appropriate, followup HIV testing shall
316 be provided when testing has been ordered under paragraph (a) or
317 paragraph (b). The medical propriety of followup HIV testing
318 shall be based upon a determination by a physician and does not
319 require an additional court order. Notification to the victim,
320 or to the victim's parent or legal guardian, and to the
321 defendant of the results of each followup test shall made be as
322 soon as practicable in accordance with this section.

323 (3) DISCLOSURE OF RESULTS.—

324 (a) The results of the test shall be disclosed no later
325 than 2 weeks after the court receives such results, under the
326 direction of the Department of Health, to the person charged
327 with or alleged by petition for delinquency to have committed or
328 to the person convicted of or adjudicated delinquent for any
329 offense enumerated in s. 775.0877(1)(a)-(n), which involves the
330 transmission of body fluids from one person to another, and,
331 upon request, to the victim or the victim's legal guardian, or
332 the parent or legal guardian of the victim if the victim is a
333 minor, and to public health agencies pursuant to s. 775.0877. If
334 the alleged offender is a juvenile, the test results shall also
335 be disclosed to the parent or guardian. When the victim is a
336 victim as described in paragraph (2)(b), the test results must

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also be disclosed no later than 2 weeks after the court receives such results, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim, and to public health agencies pursuant to s. 775.0877. Otherwise, hepatitis and HIV test results obtained pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any other person except as expressly authorized by law or court order.

(b) At the time that the results are disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of a victim if the victim is a minor, the same immediate opportunity for face-to-face counseling which must be made available under s. 381.004 to those who undergo hepatitis and HIV testing shall also be afforded to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor.

(4) POSTCONVICTION TESTING.—If, for any reason, the testing requested under subsection (2) has not been undertaken, then upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order the offender to undergo hepatitis and HIV testing following conviction or delinquency

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365 adjudication. The testing shall be performed under the direction
366 of the Department of Health, and the results shall be disclosed
367 in accordance with the provisions of subsection (3).

368 (5) EXCEPTIONS.—~~The provisions of~~ Subsections (2) and (4)
369 do not apply if:

370 (a) The person charged with or convicted of or alleged by
371 petition for delinquency to have committed or been adjudicated
372 delinquent for an offense described in subsection (2) has
373 undergone hepatitis and HIV testing voluntarily or pursuant to
374 procedures established in s. 381.004(3)(h)6. or s. 951.27, or
375 any other applicable law or rule providing for hepatitis and HIV
376 testing of criminal defendants, inmates, or juvenile offenders,
377 subsequent to his or her arrest, conviction, or delinquency
378 adjudication for the offense for which he or she was charged or
379 alleged by petition for delinquency to have committed; and

380 (b) The results of such hepatitis and HIV testing have
381 been furnished to the victim or the victim's legal guardian, or
382 the parent or legal guardian of the victim if the victim is a
383 minor.

384 (6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT;
385 DISCLOSURE.—In any case in which a person convicted of or
386 adjudicated delinquent for an offense described in subsection
387 (2) has not been tested under subsection (2), but undergoes
388 hepatitis and HIV testing during his or her incarceration,
389 detention, or placement, the results of the initial hepatitis
390 and HIV testing shall be disclosed in accordance with ~~the~~
391 ~~provisions of~~ subsection (3). Except as otherwise requested by
392 the victim or the victim's legal guardian, or the parent or

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guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent hepatitis and HIV test results obtained within 1 year after the initial hepatitis and HIV test are performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (2) the request for disclosure under this subsection shall be considered a standing request for subsequent hepatitis and HIV results conducted within 1 year of the test performed pursuant to subsection (2). If the hepatitis and HIV testing is performed by an agency other than the Department of Health, that agency shall be responsible for forwarding the test results to the Department of Health for disclosure in accordance with the provisions of subsection (3). This subsection shall not be limited to results of hepatitis and HIV tests administered subsequent to June 27, 1990, but shall also apply to the results of all hepatitis and HIV tests performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (2) during their incarceration, detention, or placement prior to June 27, 1990.

Section 12. Section 960.198, Florida Statutes, is amended to read:

960.198 Relocation assistance for victims of domestic violence and sexual violence.—

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award a

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one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment or to a victim of sexual violence who reasonably fears for her or his safety.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a domestic violence or sexual violence offense was committed;

(b) The domestic violence or sexual violence offense must be reported to the proper authorities;

(c) The victim's need for assistance must be certified by a certified domestic violence center or a certified rape crisis center in this state; and

(d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

Section 13. Paragraph (n) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historic accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

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(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection.

Section 14. This act shall take effect July 1, 2011.